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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 843

JOHNSON OIL REFINING COMPANY, APPELLANT,

vs.

THE STATE OF OKLAHOMA EX REL., C. E. MITCHELL, COUNTY ATTORNEY OF PAWNEE COUNTY, OKLAHOMA, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

STATEMENT AS TO JURISDICTION.

MAY IT PLEASE THE COURT:

The appellant in support of the jurisdiction of this Court to review the above entitled cause on appeal respectfully represents:

A.

Statutory Provisions Sustaining Jurisdiction.

The jurisdiction of this Court on appeal from the Supreme Court of Oklahoma is invoked by reason of Section 237 of the Judicial Code, as amended (28 U. S. C. A., Sec. 344) having reference to appellate jurisdiction of the decrees of State courts by writ of error:

> "* * * where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

And the Act of January 31, 1928 (Ch. 14, 45 Stat. 54) abolishing the writ of error and providing that all relief which theretofore could be obtained by writ of error shall thereafter be obtainable by appeal, and by the Act of April 26, 1928 (Ch. 440, 45 Stat. 466) with reference to such appeals.

B.

Statute of the State of Oklahoma, the Validity of Which is Involved.

The statute of Oklahoma, the validity of which as construed by the Supreme Court of Oklahoma, involved in this case is Sec. 1, Ch. 44, Session Laws 1915, p. 64 (Sec. 9574, C. O. S. 1921), which reads as follows:

"All property in this State, whether real or personal, including the property of corporations, banks, and bankers, except such as is exempt, shall be subject to taxation."

C.

Date of the Judgment Sought to be Reviewed and Date Upon Which Application for Appeal Was Presented.

The judgment of the Supreme Court of Oklahoma, which is sought to be reviewed, was entered on December 20, 1932 (R. 121).

A petition for rehearing was duly filed and was denied by said court on January 31, 1933 (R. 137). The application for appeal to the United States Supreme Court was presented to the Supreme Court of Oklahoma on March 16, 1933, and allowed on March 16, 1933 (R. 160).

D.

Nature of Case and Rulings Below.

The above cause, and the judgment therein, involves the validity of an assessment for taxation by the taxing officers of Pawnee County, Oklahoma (amounting to over $756,000) of a fleet of approximately 380 tank cars belonging to appellant, Johnson Oil Refining Company, for the years 1925, 1926, and 1927, as property not listed for taxation for said years.

Appellant is a corporation of the State of Illinois, engaged in the marketing of refined petroleum products, and which business is conducted at its domicile.

It is admitted that the cars are engaged in interstate and intrastate commerce, and are used by the Johnson Oil Refining Company to transport its products from its refinery in Pawnee County, Oklahoma, to various points within and without the State in pursuance of its marketing business. It is further admitted that about ninety-nine per cent of the use of the cars was in interstate business; that each car was in the State, on an average, of about two days per month, and that they came into the State for the sole purpose of receiving a load of refinery products. Nevertheless, the entire assessable value of the entire fleet was held taxable by the Supreme Court of Oklahoma under the Oklahoma statute above referred to.

The case originated under a statute of Oklahoma, being Chapter 38, Article III, Session Laws 1909, p. 626, as amended by Chapter 189, Session Laws of 1915, p. 386 (Article XIII, Chapter 84, Oklahoma Statutes 1921, p. 3235), providing a procedure for the assessment by county treasurers of property not listed and assessed, and providing for an appeal from the action of the county treasurer to the County Court of the County, and from said court to the Supreme Court of Oklahoma. The County Treasurer of Pawnee County, over appellant's objection that he was without jurisdiction, assessed the entire fleet of cars of Johnson Oil Refining Company for the years 1925, 1926, and 1927 (R. 15). On appeal to the County Court of Pawnee County, and at the trial of the cause, Johnson Oil Refining Company specifically objected to the proposed assessment for taxation on its entire fleet of cars as unconstitutional, as depriving it of due

process of law, and as contravening the Fourteenth Amendment to the Constitution of the United States (R. 28). Notwithstanding such objection, the County Court confirmed and approved the assessment of the County Treasurer, and, notwithstanding a motion for new trial on the ground that the decision of the court deprived appellant of its rights claimed under the Fourteenth Amendment to the Constitution of the United States, entered such judgment (R. 106), and Johnson Oil Refining Company appealed to the Supreme Court of Oklahoma, assigning as error that the judgment of the County Court deprived Johnson Oil Refining Company of its property without due process of law and in contravention to the Fourteenth Amendment to the Constitution of the United States (R. 1).

The cause was consolidated in the Supreme Court, by order of that court, with three other causes on appeal from the County Court of Pawnee County, the District Court of Pawnee County, and the County Court of Osage County, Oklahoma (R. 119), being Nos. 23,219, 23,334, and 23,342 in the Supreme Court, each of which involved the validity of a like assessment on the same cars, and all of which consolidated causes, and the record therein, were considered and decided by the Supreme Court of Oklahoma in the same opinion (R. 122).

The Supreme Court of Oklahoma held that the entire fleet of cars was taxable in and by Pawnee County, Oklahoma, for the years specified, and affirmed the judgment of the County Court of Pawnee County, Oklahoma (R. 122).

In pursuit of the Company's marketing business, the cars habitually entered 17 different States during the course of a year, in which States they were taxed according to value, and the tax thereon was paid (R. 60-61-75). Such tax was, presumably, in accordance with the right of the States to so tax them under appropriate legislation, as repeatedly held by the Supreme Court of the United States.

Eidman v. *Martinez,* 184 U. S. 578.

American Refrigerator Co. v. *Hall,* 174 U. S. 70.

Pullman Palace Car Co. v. *Pennsylvania,* 141 U. S. 18.

Union Refrigerator Co. v. *Lynch,* 177 U. S. 149.

The record further shows that the property of Johnson Oil Refining Company, including its tank cars, is taxed at its domicile in Illinois, upon a valuation of its entire property which has not paid taxes elsewhere (R. 63).

It is the contention of appellant that the Statute of Oklahoma (Sec. 1, Ch. 44, Session Laws 1915, p. 64; Sec. 9574 C. O. S. 1921) as construed and applied by the Supreme Court of that State is unconstitutional, and that under Section 237 of Judicial Code, amended (U. S. C. A. Title 28, Sec. 344), Act of January 31, 1928 (Ch. 14, 45 Stat. 54) and Act of April 26, 1928 (Ch. 440, 45 Stat. 466) this Court has jurisdiction by appeal.

Said statutes apply not merely in cases where the validity of a State statute in its bare words is drawn into question, but also in cases where the validity of

the statute *as construed* by the highest court of the State is brought into question.

In determining the problem of the right of appeal in such cases the statute as presented to this Court in the record must be read just as though there were included in its language to the effect that the tank cars, such as these involved and used in the instant case should be taxed in full by the State of Oklahoma.

E.

Cases Believed to Sustain Jurisdiction.

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

In *Knights of Pythias* v. *Meyer*, 265 U. S. 30, this Court said with reference to the construction of a Nebraska statute:

> "Under the settled rule of this Court, declared so frequently and uniformly as to have become axiomatic, we must accept this decision of the highest court of the State fixing the meaning of the State Legislation as though such meaning had been specifically expressed therein."

In *Appleby* v. *City of New York*, 271 U. S. 364, this Court entertained jurisdiction on writ of error and reversed a judgment of the highest court of the State of New York, which had construed certain statutes of that State in such a manner that they contravened the Constitution of the United States. The statutes in question did not specifically, in so many words, cover the situation, but needed construction. In stating the

case Justice Taft pointed out, page 366, that the highest court of New York upheld the statutes of New York and enforced them in such a way as to impair the obligation of the plaintiff's deed in violation of Section 10 of Article One of the Federal Constitution. In his opinion, Justice Taft says, page 379:

> "The plaintiffs in their writ of error charge that the judgment of the Supreme Court of New York, as affirmed by the Court of Appeals, has interpreted and enforced the Acts of 1857 and 1871 in such a way as to impair the obligation of the contract in their deeds.
>
> "The questions we have here to determine are, first, was there a contract; second, what was its proper construction and effect; and third, was its obligation impaired by subsequent legislation as enforced by the State court?"

In *Ward & Gow* v. *Krinsky*, 259 U. S. 503, this Court took jurisdiction on writ of error in a case where the New York court construed a New York statute and upheld it as so construed. This Court said, page 510:

> "In the exercise of our appellate jurisdiction we are bound by the construction of the State law adopted by its court of last resort; * * *. Our function is confined to determining whether, as so construed and as applied to the concrete facts of the case, the statute contravenes the limitations imposed by the Fourteenth Amendment upon State action."

In *Hanover Insurance Co.* v. *Harding*, 272 U. S. 494, the Supreme Court of Illinois upheld the validity of an Illinois statute on the particular construction placed

upon it by that court. This Court took jurisdiction on a writ of error. The court said, page 509:

> "It is true that the interpretation put upon such a tax law of a State by its Supreme Court is binding upon this Court as to its meaning; but it is not true that this Court, in accepting the meaning thus given, may not exercise its independent judgment in determining whether, with the meaning given, its effect would not involve a violation of the Federal Constitution. As said by this Court in *St. Louis Southwestern Railway* v. *Arkansas*, 235 U. S. 350, at page 362, where the question was whether a tax law violated the equal protection clause of the Fourteenth Amendment:
>
> " 'Upon the mere question of construction we are of course concluded by the decision of the State court of last resort. But when the question is whether a tax imposed by a State deprives a party of rights secured by the Federal Constitution, the decision is not dependent upon the form in which the taxing scheme is cast, nor upon the characterization of that scheme as adopted by the State court. We must regard the substance, rather than the form and the controlling test is to be found in the operation and effect of the law as applied and enforced by the State.' "

In *Alabama Railway Co.* v. *Jackson Ry. Co.*, 271 U. S. 241, this Court on writ of error reversed a decision of the state court which construed and upheld a statute of the State of Alabama.

In *Southern Ry. Co.* v. *Kentucky*, 274 U. S. 76, this Court entertained jurisdiction on a writ of error of a

case in which the Court of Appeals of Kentucky upheld a tax on certain lines of railway under a statute of the State, and reversed the State court's construction and application of the statute.

See also:

Anglo-Chilean Nitrate Sales Corp. v. *Alabama*, U. S. No. 377, October Term, decided February 6, 1933;

Detroit International Bridge Co. v. *Corporation Tax Appeal Board*, U. S. No. 51, October Term, 1932, decided December 5, 1932.

Bryant v. *Zimmerman*, 278 U. S. 63.

Alpha Cement Co. v. *Massachusetts*, 268 U. S. 203.

We therefore respectfully submit that this Court has jurisdiction.

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